

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TODD TWIST,

Defendant-Appellee.

UNPUBLISHED

August 9, 2005

No. 253027

Macomb Circuit Court

LC No. 03-002728-FH

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

The prosecution appeals as of right from the trial court order quashing the information that charged defendant with taking property worth more than \$1,000 but less than \$20,000 by false pretenses, MCL 750.218(4)(a). We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In June 2002, defendant agreed to purchase one hundred nursery trees from complainant, Dale Ingersoll, for a total of \$8,000. Defendant provided a check for this amount upon delivery of the trees, but ordered his bank to stop payment two days later. One of defendant's employees stated that the trees looked "wilty" and that needles would start falling off if you shook them. However, Ingersoll testified that, when he telephoned defendant regarding payment, defendant merely stated that he had to put more funds in the account and never mentioned the condition of the trees. Based on Ingersoll's complaint, the prosecution charged defendant with taking by false pretenses and the district court bound him over for trial. Defendant then moved to quash the information. The trial court, finding that the prosecution failed to present any evidence that defendant made a false representation or that he had intended to defraud Ingersoll, granted the motion and dismissed the charge.

We review de novo a circuit court's decision whether a lower court abused its discretion in deciding to bind a defendant over for trial. *People v Schut*, 265 Mich App 446, 452; 695 NW2d 551 (2005). Such an abuse occurs when a lower court's decision is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *People v Yost*, 468 Mich 122, 127; 659 NW2d 604 (2003), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

Under MCL 766.13 and MCR 6.110(E), a district court must bind a defendant over for trial if it determines that there is probable cause to believe that a felony has been committed and that defendant committed it. *People v Carter*, 250 Mich App 510, 521; 655 NW2d 236 (2002). “Probable cause exists when there is a reasonable ground of suspicion supported by circumstances sufficiently strong to warrant a cautious person to believe that the accused is guilty of the offense charged.” *Id.*

At a preliminary examination, “[s]ome evidence must be presented regarding each element of the crime or from which those elements may be inferred.” *People v Goecke*, 457 Mich 442, 469; 579 NW2d 868 (1998). “Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to support a bindover.” *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997). In determining whether a crime has been committed, a magistrate “has not only the right, but the duty, to pass judgment on the credibility of the witnesses.” *Yost, supra* at 127-128.

The elements of taking by false pretenses are:

(1) a false representation as to an existing fact; (2) knowledge by [the accused] of the falsity of the representation; (3) use of the false representation with an intent to deceive; and (4) detrimental reliance on the false representation by the victim. [*People v Bearss*, 463 Mich 623, 627; 625 NW2d 10 (2001).]

A false representation “does not have to be expressed in words” and may be accomplished by an act. *People v Reigle*, 223 Mich App 34, 39; 566 NW2d 21 (1997). Defendant’s actions may be seen as a misrepresentation of an existing fact. It is undisputed that upon receipt of the trees in question, defendant gave the driver of the delivery truck a check for \$8,000. This action constituted an implicit representation that he was providing payment for the trees at that time. The testimony presented at the preliminary examinations showed that defendant never complained to the seller regarding the condition of the trees or attempted to reject the shipment. Nevertheless, he stopped payment on the check and kept the trees. This constitutes sufficient evidence for a cautious person to believe that defendant made a misrepresentation regarding payment for the trees.

However, the trial court also determined that the prosecution failed to present any evidence that defendant acted with the intent to defraud Ingersoll. A defendant’s knowledge of the falsity of his representation and his intent to defraud may be inferred from the entirety of the evidence. *Reigle, supra* at 39. Neither the magistrate nor the trial court is to determine whether there is proof of intent beyond a reasonable doubt; these are questions of fact for the trier of fact to resolve. *People v Reeves*, 202 Mich App 706, 712; 510 NW2d 198 (1993). Although a trier of fact could find that defendant did not possess the intent to defraud, the circumstances support an inference that defendant intended to cheat Ingersoll out of payment for the trees by stopping payment on the check.

The prosecution presented some evidence from which each of the elements of taking by false pretenses may be inferred. Thus, the district court’s determination that probable cause existed to bind defendant over on such a charge was not “grossly violative of fact and logic.” *Yost, supra* at 127. The trial court erred in holding otherwise.

Reversed and remanded for reinstatement of the charge. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Hilda R. Gage

/s/ Christopher M. Murray